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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 UNITED STATES OF AMERICA,
12
13 vs. Plaintiff,
14 ISRAEL MARTINEZ ARIZA
15 Defendant.

CASE NO. 12cr0442 JM
CIVIL NO. 13cv1853 JM

ORDER DENYING MOTION
BROUGHT PURSUANT TO 28
U.S.C. 2255

16 Pursuant to a plea agreement, Defendant Israel Martinez Ariza (“Defendant”),
17 a non-United States citizen, pleaded guilty to one count in the indictment for
18 importation of 11.65 kilograms of heroin in violation of 21 U.S.C. §§952 and 960. On
19 July 26, 2013 the court sentenced Defendant to 51 months’ custody and three years of
20 supervised release. On or about August 8, 2013 Defendant filed a motion for a
21 reduction of the sentence under 28 U.S.C. § 2255 (“Motion”). Defendant contends that
22 his constitutional rights to equal protection and due process have been violated
23 because, as an alien, he is ineligible for a one-year sentence reduction through a drug
24 program and/or early release to a halfway house. For the reasons set forth below, the
25 court summarily dismisses the Motion.

26 **DISCUSSION**

27 **28 U.S.C. § 2255 Review**

28 Claims for relief under 28 U.S.C. § 2255 must be based on a constitutional error,

1 a jurisdictional error, a defect resulting in a miscarriage of justice, or an unfair
2 procedure. 28 U.S.C. § 2255(a); United States v. Timmreck, 441 U.S. 780, 783-84
3 (1979). Under Rule 4(b) of the Rules Governing Section 2255 Proceedings, “[i]f it
4 plainly appears from the motion, any attached exhibits, and the record of prior
5 proceedings that the moving party is not entitled to relief, the judge must dismiss the
6 motion and direct the clerk to notify the moving party.” The court does not need to hold
7 an evidentiary hearing or obtain a response from the government. See 28 U.S.C. §
8 2255; United States v. Quan, 789 F.2d 711, 715 (9th Cir. 1986).

9 **I. Waiver**

10 Defendant waived his right to collaterally attack his sentence. Contract law
11 standards govern the validity of plea agreements. United States v. Keller, 902 F.2d
12 1391, 1393 (9th Cir. 1990). A defendant validly waives his appellate rights if the
13 language of the waiver encompasses his right to appeal on the grounds raised and he
14 knowingly and voluntarily agrees to waive those rights. United States v. Rahman, 642
15 F.3d 1257, 1259 (9th Cir. 2011). A waiver provision barring a defendant from seeking
16 collateral relief under a § 2255 motion is valid and enforceable. See United States v.
17 Abarca, 985 F.2d 1012, 1014 (9th Cir. 1993); see United States v. Navarro-Botello, 912
18 F.2d 318, 321-22 (9th Cir. 1990) (reasoning the public policy of finality supports
19 upholding waivers in plea agreements). Defendant validly waived his right to
20 collaterally attack his sentence when he executed a plea agreement expressly waiving
21 his right to appeal or to collaterally attack his conviction and sentence unless the court
22 imposed a custodial sentence greater than the high end of the guidelines range
23 recommended by the government. The waiver applies because, at sentencing, the court
24 imposed a sentence within the recommended guideline range. The record reveals that
25 Defendant’s waiver was knowing and voluntary. Accordingly, the court dismisses the
26 Motion.

27 **II. Procedural Bar**

28 Even if Defendant did not waive the right to collaterally attack his sentence, he

1 has procedurally defaulted on his claim. A defendant procedurally defaults on claims
2 that he could have, but did not raise on appeal. See Bousley v. United States, 523 U.S.
3 614, 621-22 (1998). Defendant did not raise these claims on direct appeal. He does not
4 allege that he is innocent or that cause and prejudice existed to excuse his procedural
5 default. See Murray v. Carrier, 477 U.S. 478, 485 (1996). Accordingly, the court
6 dismisses the Motion.

7 **II. The Merits**

8 Defendant's claim also fails on the merits. An Equal Protection claim arises
9 when a statute, on its face or when enforced, results in the differential treatment of
10 similarly situated persons due to discriminatory government intent. United States v.
11 Lopez-Flores, 63 F.3d 1468, 1472 (9th Cir. 1995); Plyler v. Doe, 457 U.S. 202, 216
12 (1982). The court must analyze the distinction under the appropriate level of scrutiny.
13 Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265
14 (1977). Unless a suspect classification is present, the unequal treatment must only be
15 rationally related to a legitimate state interest. Cleburne v. Cleburne Living Ctr., 473
16 U.S. 432, 440 (1985). "The fact that an Act of Congress treats aliens differently from
17 citizens does not itself imply that such treatment is invidious." Matthews v. Diaz, 426
18 U.S. 67, 80 (1976). Federal classifications based on alienage receive rational basis
19 review because Congressional power to serve national interests in immigration and
20 foreign relations justify selective legislation not permitted to the states. Id. at 81; see
21 Graham v. Department of Pub. Welfare, 403 U.S. 365, 377 (1971).

22 The exclusion of non-citizen inmates from participating in an early release drug
23 program survives rational basis scrutiny. See McLean v. Crabtree 173 F.3d 1176, 1186
24 (9th Cir. 1999). The Ninth Circuit held that the Bureau of Prisons ("BOP") did not
25 violate the equal protection rights of non-citizen plaintiffs with Immigration and
26 Naturalization Service detainees by denying them a sentence reduction. The court
27 reasoned that the government distinction between prisoners with detainees and
28 prisoners without detainees did not create a suspect classification. Id. at 1186.

1 Excluding prisoners with detainers from community-based treatment programs and
2 sentence reduction eligibility rationally served the government's legitimate interest in
3 eliminating the risk of a prisoner's escape during the community-based treatment
4 phase. Id. The government did not violate Defendant's equal protection rights by
5 denying him the opportunity to participate in an early-release drug program based on
6 his non-citizen status because of a legitimate interest in eliminating a risk of flight.

7 In the context of early-release drug program eligibility benefits, deportable aliens
8 are not similarly situated to United States citizens because citizen inmates must re-enter
9 domestic society while deportable inmates are denied that privilege. Patterson-Romo
10 v. United States, No. 10-CR-3119, 2012 U.S. Dist. LEXIS 79319, at *3 (denying
11 petitioner's motion for a reduction of the sentence); United States v. Avendano, No.
12 12-CV-1495, 2012 U.S. Dist. LEXIS 89959, at *6 (denying an identical petition);
13 Ortiz-Castillo v. United States, No. 11-CR-2511, 2012 U.S. Dist. LEXIS 39423, at *5
14 (denying an identical petition); Rios-Ibarra v. United States, No. 09-CV-205-JD, 2012
15 U.S. Dist. LEXIS 10977, at *5 (denying an identical petition); United States v.
16 Brionez-Villela, No. 8:12CR73, 2008 U.S. Dist. LEXIS 85164, at *5 (denying a similar
17 petition). Defendant is not similarly situated to citizen prisoners who are eligible for
18 early release drug program benefits because he will not re-enter domestic society in the
19 United States following incarceration.


20 A challenge to the BOP policy of excluding non-citizens from a sentence
21 reduction option does not fall within the scope of a 28 U.S.C. § 2255 motion. United
22 States v. Armando Rodriguez-Palomares, No. 05-CR-1965-JM 2008 U.S. Dist. LEXIS
23 85572, at *6 (denying a motion for a reduction of the sentence because a downward
24 departure based on deportable alien status is unavailable under § 2255). The
25 determination of a prisoner's eligibility for participation in an early release drug
26 program rests entirely within BOP discretion and a prisoner has no constitutionally
27 protected liberty interest in early release. See 18 U.S.C. § 3621(e)(2)(B); Lopez v.
28 Davis, 531 U.S. 230, 243 (2001); Downey v. Crabtree, 100 F.3d 662, 670 (9th Cir.

1 1966). Defendant does not have a protected liberty interest in early release. He may not
2 challenge the terms of an early release drug program eligibility policy under a 28
3 U.S.C. § 2255 motion.

4 In sum, the court denies the Motion to reduce Defendant's sentence. The Clerk
5 of Court is instructed to close the file.

6 **IT IS SO ORDERED.**

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8 DATED: August 14, 2013

9 
10 Hon. Jeffrey T. Miller
11 United States District Judge

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